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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,223	03/08/2001	Christopher Keith	0505-4014	6685
24259	7590	09/01/2005	EXAMINER	
BRENDA POMERANCE LAW OFFICE OF BRENDA POMERANCE 260 WEST 52 STREET SUITE 27B NEW YORK, NY 10019			OYEBISI, OJO O	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/802,223	KEITH, CHRISTOPHER	
	<b>Examiner</b>	<b>Art Unit</b>	
	OJO O. OYEBISI	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01/31/2005
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2,4, 10, and 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Kane (U.S PAT: 6,317,728).

Re claim 1: Kane discloses a method of facilitating trading, comprising:

automatically capturing a trade between two market participants (i.e., agents)

automatically determining by a software process executing on a computer,

whether each of the participants has gained money (i.e., a win) or lost money

from the trade (i.e., a loss), and automatically updating, by the software process,

a preference rating based on the determination (i.e., a cumulative merit quotient)

of whether money was gained or lost from the trade (see col.8, lines 35-67, also

see col.15, lines 5-10).

Re claim 2: Kane further discloses the method as stated supra wherein the

preference rating is associated with the two market participants (see col.8, lines

42-45).

Re claim 4: Kane further discloses the method as stated supra wherein the preference rating is based on at least one threshold (i.e., a win or a loss, see col.8, lines 35-36).

Re claim 10: Kane discloses the method wherein the preference rating (i.e., cumulative merit quotient) is used in determining whether to allow or prohibit a next trade between the market participants (i.e., the system monitors the success rate and failure rate of each agent and uses the merit quotient to control the power the agent wields in subsequent voting, see col.8, lines 35-67).

Re claim 13: Kane discloses the method as stated supra wherein the automatically updating occurs after the trade (see col. 13, lines 43-47).

Re claim 14: Kane discloses the method as stated supra wherein the automatically updating occurs at a predetermined time (i.e., daily see col. 13, lines 43-47).

Re claim 15: Kane discloses the method as stated supra wherein the automatically capturing and updating are performed by a market process (see col.11, number 8, also see col. 13, lines 43-47).

Re claim 16: Kane discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process (see col.13, lines 37-47).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 5-9, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane in view of SAIAS et al (SAIAS hereinafter: Pub. No, 2003/0014379).

Re claim 3: Kane does not explicitly disclose the method wherein the preference rating is two-sided, each of the sides corresponding to how one of the two market participants rates the other of the two market participants. SAIAS makes this disclosure (see page 21, paragraphs 0310-0311). Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane to allow market participants to pick trading parties based on the parties' trading performance. Further, the applicant discloses that "traders must manually update their lists of desired or undesired contras" (see page 32, lines 14-18, and lines 21-24). Thus, since the task above can be performed manually as disclosed by the applicant, it would have been obvious to one of ordinary skill in the art to automate this task by using Kane system to accomplish the motivation stated *supra*.

Re claim 5: Kane does not explicitly disclose the method wherein the at least one threshold is supplied by at least one of the market participants. SAIAS makes this disclosure (see page 21, paragraphs 0310-0311). Thus, it would have been

obvious to one of ordinary skill in the art to include SAIAS in Kane system to allow market participants to pick trading parties based on the parties' trading performance.

Re claim 6: Kane does not explicitly disclose the method wherein the preference rating is also based on information supplied by at least one of the market participants. SAIAS makes this disclosure (see page 21, paragraphs 0310-0311).

Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system to allow market participants to pick trading parties based on the parties' trading performance.

Re claim 7: Kane does not explicitly disclose the method wherein the information comprises a rule for determining the preference rating during the automatic updating. SAIAS makes this disclosure (see page 21, paragraphs 0310-0311).

Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system to allow market participants to pick trading parties based on the parties' trading performance.

Re claim 8: Kane does not explicitly disclose a method wherein the information comprises a rating for the other market participants. SAIAS makes this disclosure (i.e., priority rating score, see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system in order to facilitate a faster matching process by prioritizing the market requests.

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Re claim 9: Kane does not explicitly disclose the method wherein a market participant can designate itself as anonymous. SAIAS makes this disclosure (see page 22, paragraph 0317). Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system in order to allow the negotiation process to be automated without publicizing the internal state of the market participants.

Re claim 11: Kane does not explicitly disclose the method wherein the preference rating is based on comparing the trade price with a metric. SAIAS makes this disclosure (see pg 22, paragraph 0320). Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system in order for participants to clearly specify their flexibility on the terms of the exchange.

Re claim 12: Kane does not explicitly disclose the method wherein the metric is a market price at a time. SAIAS makes this disclosure (see pg 22, paragraph 0319). Thus, it would have been obvious to one of ordinary skill in the art to include SAIAS in Kane system in order for participants to clearly specify their flexibility on the terms of the exchange.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 17-22 rejected under 35 U.S.C. 102(e) as being anticipated by SAIAS.

Re claim 17: SAIAS discloses a method of facilitating trading, comprising:

automatically providing a preference designation of anonymous from a first trading process to a market process, and automatically participating in a trade at the market process with a second trading process that is unaware of the identity of the first trading process yet is able to obtain a preference rating from the market process for the first trading process wherein the first and second trading processes and market process are each software processes executing on a computer (see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317).

Re claim 18: SAIAS discloses a method of facilitating trading, comprising:

automatically providing information to a preference updating process, and automatically deciding, at a software process executing on a computer, whether to trade with another market participant based on a preference rating of the other market participant determined by the preference updating process( see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317-0318).



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Re claim 19: SAIAS further discloses a method as stated supra wherein the information comprises a rule for determining the preference rating of the other market participant (see pg 21, paragraph 0310-0311).

Re claim 20: SAIAS further discloses a method as stated supra wherein the information comprises a rating (i.e., priority rating score) for the other market participants (see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claim 21: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a platform process (i.e., the AM 108, see pg 21, paragraph 0310).

Re claim 22: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a market process (i.e., automated market, see pg 21, paragraphs 0306-0311).

### ***Response to Arguments***

- 7 Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571) 272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

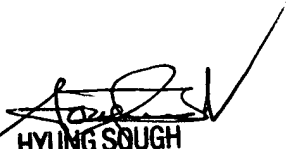
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HYUNG S. SOUGH can be reached on (571)272-6799. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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